

BOARD OF ZONING APPEALS

Minutes

November 23, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on November 23, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, FLOYD PITTS, BRADLEY TIDEMANN, DAVE BABICH, and JOHN ROGERS present. JUANITA SWANN, and RANDY PHILLIPS absent.

The following Planning Department staff members were present: Assistant Secretary, LISA VERTS and Recording Secretary, ROSE SIMMERING.

Also present was SHARON DICKGRAFE, Law Department.

PITTS: A little after 1:30 p.m. I think we call the meeting to order. We are going to deviate just a little bit from the normal procedure. I am going to ask the recording secretary to call role. This will also give you an opportunity to introduce our new member.

SIMMERING: Role called and a quorum has been established.

PITTS: We do have a quorum. Board of Zoning Appeals is in session. Do we have minutes for the previous meeting?

SIMMERING: No, we do not.

VERTS: No, minutes at this time.

PITTS: No minutes to be approved. We will go ahead to the first case BZA 24-99.

1. **Case No. BZA 24-99, Clark Hospitality, c/o Paul Clark, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow an increase in the number, height and size of building signs and to allow an increase in the number, height and size of pole signs on property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the northwest corner of Webb and 29th Street North.

VERTS: Reviews staff report and presents slides.

BACKGROUND: The applicant is requesting variances for signage for Mainstay Suites, an extended stay hotel, at the northwest corner of the intersection 29th Street North, Webb Road and K-96. This hotel has been in operation for approximately 4 months. The property on which the hotel is situated is zoned "GO" General Office, which allows a hotel provided the lot size is greater than 25,000 square feet. The lot in question is 2.62 acres, well in excess of the minimum size required for this use. Despite the acceptability of a hotel use in the "GO" District, the City of Wichita Sign Code has greater restrictions on signage in the "GO" District than would be found in other commercial districts. These limits on size and height of a pole sign are the impetus for the applicant's request for variance in the signage requirements.

Specifically, in the "GO" District, the Sign Code would permit the construction of one pole sign with a maximum square footage of 32 square feet and a maximum height of 20 feet.

Currently, the hotel has two building signs (southeast and northeast elevations) that total 128 square feet and one is at a height of 31.5 feet. The applicant received a height and size variance from the Board of Zoning Appeals (BZA 28-98) for these two signs in December of 1998.

The applicant is requesting a pole sign of 96 square feet at a height of 35 feet along the K-96 frontage. This requires a height and size variance.

The surrounding uses are mixed in nature and include residential, hotels, and vacant property, also zoned "GO". Across K-96 to the north is another hotel, Candlewood Hotel, which is on property zoned "LI" Limited Industrial. Directly to the south a Marriot Courtyard is under construction on property zoned "LC" Limited Commercial. Both of these districts allow more signage than is allowed in the "GO" District for the same use. If this site, Main Stay Suites, was in the "LC" zoning district, none of these variances would be required; all requested signage in this application would be allowed per the City of Wichita Zoning Code.

The applicant indicates that persons traveling along K-96 are unable to identify the building until they are past the exit ramps. Mainstay Suites will eventually occupy space on the K-DOT "Informational mini-billboards," but these will not be in place for at least two years. According to the applicant, in the past three months their occupancy rate has been only 12%, "with the national average of this hotel group being 70%." The applicant cites "no visibility" as the number one reason for this low occupancy rate.

The Board of Zoning Appeals heard this request at its October 26, 1999 meeting. At that meeting the option of placing the sign "behind" the northeast side of the building was discussed. The variances tied to the application of a pole sign (#3 & #4) were deferred in order for the applicant to have time to explore this option. Subsequent to the October 26, 1999 meeting, the applicant submitted a revised site plan showing the new location of the sign as being approximately 75 feet behind the front line of the building between the building and the K-96 right-of-way. Additionally, the applicant has reduced the original size of the sign from 130 square feet to 96 square feet. Color sign designs were submitted for the new size sign that show a bright blue sign background with yellow lettering and a bright blue support structure.

ADJACENT ZONING AND LAND USE:

NORTH	“LI”	– K-96 and Candlewood Hotel
SOUTH	“LC”	– Marriot Courtyard, under construction
	“SF-6”	– Fox Pointe Residential entryway
EAST	“LI”	– K-96/Webb Road Intersection
WEST	“GO”	– vacant

VARIANCE #3: Variance to increase the size of a pole sign from 32 square feet to 96 square feet

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is zoned “GO” General Office in an area where other hotels are located, but on property zoned “LC” Limited Commercial or “LI” Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and identification and visibility of this hotel is very difficult without a pole sign for the north- and southbound traffic on K-96..

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will be hidden from these residential neighborhoods.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed a pole sign of this size. Identification of this hotel is difficult for persons traveling on K-96 without this pole sign. It was not the intent of the zoning regulation to restrict this usage, which is more commercial in nature, with the limitations designed into the signage requirements for the “GO” General Office district.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the “GO” General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the

Secretary that the variance to increase the size of a pole sign from 32 square feet to 96 square feet be GRANTED, subject to the following conditions:

1. This increase in square footage shall apply to one on-site pole sign along the K-96 frontage of the hotel, as indicated on the submitted site plan.
2. The pole sign approved by this variance shall be limited to a non-flashing internally-illuminated, non-rotating sign and shall conform to the submitted sign design. No additional signage or logo shall be placed on the pole or supporting structure and that support structure shall be of a neutral color.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

VARIANCE #4: Variance to increase the height of a pole sign from 20 feet to 35 feet

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is zoned “GO” General Office in an area where other hotels are located, but on property zoned “LC” Limited Commercial or “LI” Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and identification and visibility is difficult without the sign height requested.

ADJACENT PROPERTY: It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will be hidden from these residential neighborhoods.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed a pole sign of this height. Identification of this hotel is difficult for persons traveling on K-96. It was not the intent of the zoning regulation to restrict this usage, which is more commercial in nature, with the limitations designed into the signage requirements for the “GO” General Office district.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the “GO” General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to increase the height of a pole sign from 20 feet to 35 feet be **GRANTED**, subject to the following conditions:

1. This increase in height shall apply to one on-site pole sign along the K-96 frontage of the hotel, as indicated on the submitted site plan.
2. The pole sign approved by this variance shall be limited to a non-flashing, internally-illuminated, non-rotating pole sign and shall conform to the submitted sign design. No additional signage or logo shall be placed on the pole or supporting structure and that support structure shall be of a neutral color.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

VERTS: BZA 24-99, originally, if you recall from last meeting, this was four variances, two dealt with the building sign and the other two dealt with the pole sign. All four variances were for MainStay Suites at Webb and Kellogg and 29th on the intersection of those three streets. Variances one and two were approved last time for the building sign. Variances three and four, a variance to increase the height of a pole sign, a variance to increase the size or the area of the pole sign were deferred until today. In going over the cases, I will just briefly go through some of the history, or the background that I went through last time.

As I mentioned MainStay Suites, (we do not have a pointer – Rose please call Kirby and ask him to bring a pointer.) The area outlined here, is roughly the area that we are speaking of (showing slide). It is zoned “GO” General Office and in that zoning district there is restricted signage as opposed to other zoning districts such as limited commercial and limited industrial that have more signage availability in those districts for the same type of commercial use, in this case a hotel. The applicant had asked for an increase in a pole sign. This is the site plan originally submitted by the applicant, the original pole sign was for this location here, and that was a pole sign of 35 feet tall and 130 square feet in area. Since last meeting the applicant has reduced that 130 feet to 96 square feet in area, but still maintains the 35-foot height.

At the meeting last time, it was suggested that the applicant could perhaps move the location of the sign. There was some question as to whether the sign could be moved behind the building instead of out here in front so that residential areas over in this area, would not be able to see the sign. That was the major area of contention from last time’s meeting if you recall. The new site plan that should be in your staff report, or the secretary’s report that you received, shows the new location for the pole sign and it is about half way back on this edge of the building within the utility easement, about 75 feet back from the front of the structure. I did mention that it has been reduced to a 96 square feet.

There is essentially no difference in the design of the new sign when it was reduced to 96

square feet, the new site plan with the new sign design, and I do have a color photo of that, this was submitted since the last meeting, by the applicant. Again, the sign design is 96 square feet, 35 feet overall height. The applicant has submitted these photographs that have been digitally enhanced with a replication of the sign to be proposed on this site. It is a little hard to see, especially without a pointed, this is going southeast on K-96 you can see the Candlewood Estate sign here, MainStay Suites is the structure behind the sign there and this would be the proposed sign. This is looking the opposite direction looking northwest and again MainStay Suites and the proposed sign here. This is on the property looking at the proposed sign, and being on top of K-96 as it crosses essentially over the overpass there what would be visible with the 35 foot sign. These are the slides that you saw the last time and I will just go quickly through them. (Goes through slides).

As before, staff is in support of both of these variances, the variance to increase the height and the variance to increase the size of the sign. We did add on to the conditions for both variances that the support structure that you saw here, which is the bright blue color, that that actually be a neutral color, either a gray or beige of something so that it does not appear so obtrusive as the whole structure. I would answer any questions at this time if there are any.

PITTS: You did mention a couple of times that the proposed sign, and the proposed location, can you expand on that a little bit? It looked like it was in place.

VERTS: The pole sign was in place? I am sorry.

PITTS: When you mentioned the proposed location.

VERTS: Ok, back to the site plan. When the applicant first submitted the application, this was the proposed location for the sign, after last times meeting, it was suggested that this could be moved back here to be out of view of these residential homes down here. This is the new location, there is a utility easement and it is my understanding that the applicant has been in contact with the utility companies and has hold harmless agreements for that sign being in the easements. Did I answer your question?

PITTS: Not quite. I am having problem in posing the question. But, as you were going through your slides showing the sign you showed the proposed location.

VERTS: Of the digitally enhanced images?

PITTS: Is that what that was?

VERTS: Yes. The applicant has taken digital photographs running along K-96 and just in placed that little image of the sign.

PITTS: That solves my questions. Any other questions from the bench for Lisa Verts?

BABICH: Is the term, pole sign, versus pylon sign a technical term or that a matter of semantics? Because we have been talking about pole sign and that is what the documentation calls for and what we see depicted here is a pylon sign.

VERTS: I would have to refer to Mr. Boggs. I guess in my limited experience my view that pylon and pole sign would be the same. If he is meaning something different perhaps he can expound on that.

FOSTER: So to mean monopole.

VERTS: Pardon me.

FOSTER: So it means monopole. One pole.

VERTS: One pole. Yes.

PITTS: We can get to that questions when the applicant comes forward. Are there any other questions for staff?

FOSTER: Lisa, have you had anymore input from citizens?

VERTS: Right after the meeting last time, I had some citizen's call just for the outcome of the meeting. As far as additional comments, and this was not republished and it was not renotified, so unless they got the word that it was deferred from last time they would not know that it was being heard again today. So the calls that I did have were just questioning what the outcome of the last times meeting was.

PITTS: Ok. Is anyone from the applicant, present to be heard? Thank you, Lisa.

LARRY BOGGS, 319 S. OAK, WICHITA, KS 67213 - REPRESENTING CLARK HOSPITALITY: Doing business as a franchise of MainStay Suites. As you know, we are a hotel specializing as a extended stay facility. As well as, offering individual rooms to the general public on a nightly basis. After performing our own survey of our guests, who arrived without reservations, we came to a conclusion already suspected. Our clientele is not aware of our presence. At present we are averaging three times vacancy rate of our national chains average.

We know that our situation is unique in that our property is zoned "GO" General Office, probably because of its proximity to the residential zoning to the south. We feel we have an excellent location on this perimeter highway to this fine city. As we discussed previously we have been unable to attract our share of guests to this facility. After meeting with you last month, we redesigned our sign by eliminating any secondary copy which probably would have been illegible, except for those in close proximity. We focused on our name, and our company logo by reducing the background margin area and bringing the total size to 96 square feet. It is our desire to be better identified to the general public traveling K-96 from both directions by installing a free standing, pylon, pole if you will, sign on the north side of our property. It is not our desire to be bright or flashy towards the residential area to the south, which will probably be the case by our competition on the southwest corner of 29th and Webb.

We have tried to keep our facility somewhat low-key, if you did not know any different, you would probably think that we were a small apartment complex. We are not a convention center and we do not and will not have any food service. The only place that

our zoning has been a hindrance is our signage. We do not want overkill, just enough to adequately do the job. We are providing pictures, showing the desired sign, over-laid at the site from several distances, from both directions. It is our opinion that this is the minimize size at the proposed 30 foot height limit that will help make the traveling motorists aware of our presence in time to have a choice of another place to stay. Through our own survey medium, we have discovered that our closest competitor is averaging over 30 percent of their business with walk-ins.

Most of us are opposed or slow to make up our minds about change. But, this side of town is going to grow and expand. In the future almost every lot along this corridor between Webb and Rock Road is zoned at least "LC" Light Commercial to "LI" Light Industrial and will have the opportunity to display their identity through the medium of on premise advertising by installing a display equal to or in some cases, two, to three times larger than what we are requesting. We are proud of our facility and the neighborhood, this is why we are trying to work and cooperate by reducing the size, changing the location to the north side of our hotel, so it will not be visible to any of our neighbors to the south. The Metropolitan staff agrees with our proposed signage and have concluded the change should be granted. We are asking for your infinite wisdom and judgement, by voting in favor of our proposed change.

PITTS: Thank you Larry for the presentation, I am happy to note that you have just about doubled your occupancy rate since the last time you were here. Before you said you were running about 12 percent and now you are about 1/3 of the national average, so that is about 24 percent. Are there any questions? Did you answer the question as to the difference between a pylon sign?

BOGGS: Yes. In my estimation they are the same. To me a monolithic is a constant from the ground to the top. This is a pylon. Particularly, I think of a pylon when we do have a cladding around the pole. Which is strictly decorative.

PITTS: Did that answer you question Mr. Babich?

BABICH: Yes. Some clarification of the secretary's report it says, you are asking for a variance from 20 to 35 feet. Your presentation is at 30 feet.

BOGGS: No, it is at 35 feet.

BABICH: Your presentation says 30 feet.

BOGGS: Did I say 30 feet? I was wrong. It is 35 feet and that is what we had on the size design.

BABICH: You agree with the staff recommendation to change the color of the pylon?

BOGGS: Yes, I do. Mr. Clark and I myself have agreed that it does need to be some color tying in with the building. That is a very, very, busy highway. I did not realize how busy it was until I stopped and tried to take some pictures out there. This is the top part of our building up there is 37 feet 8 inches. We tried to bring our sign into where it is approximately just about 3 feet underneath of it. This is how we arrived at how big it

is up against there. I did furnish Lisa with some colored pictures that bring this up closer to where you can see it.

But, I am setting over in the right hand lane, and as you can see Candlewood is most visible and we are kind of hidden behind the break sign. Here I am coming from the other direction again, we are just about 3/8ths and 1/2 mile away, still too far to be able to see our sign. I did have a shot half way between here and the one where I was up on top, where I still had time to change but there was a bush or something in the road of where we wanted to put the sign at. It would not, in fact I think it was the caution sign, the diamond that you see underneath of our sign right there.

Just to show you what in reference, this is, and I have been in contact with all of the utilities that would be in the area. There are no utilities in this easement at the present time. I have got a letter from everybody saying that they do not have a problem with our sign except for KGE and they have promised us that the letter is on its way. I am over at the other side of the road just as I am ready to get into the right hand lane to turn. Any other questions?

ROGERS: Mr. Boggs, in that particular photo, how did you determine other than just visual that that is the height of that sign, at that point?

BOGGS: There are some letters on the front of that building, which we again blew up and measured off of, to arrive at the height of our sign. Then at the very top of the ridge of the building is at 37 foot 8 inches and we proposed 35 feet. Actually, whenever you are just about two blocks back to the south and to the east of this location, the words "Suites" blocks out. You are enough lower in the road that all you see is MainStay.

ROGERS: Thank you.

PITTS: Any other questions for Mr. Boggs? Is there anyone else to speak for the variance? Is there anyone to speak in favor of the variance? Is there anyone to speak against?

PAUL CLARK- OWNER OF THIS PROPERTY: I just want to insure the Board that we have taken every measure that we can to put this sign in the location that should not be intrusive to the neighbors, and then to the neighborhood. As far as the color, I agree that can change. I can not do anything about the blue and white on the sign part, but I can sure change the color of the pole holding it up. I did not like the blue either.

But, we would appreciate your vote in favor of this and I think we went as far as we can go as far as changing the sign size. By lowering the square footage of the sign and making sure the height is under the ridge of the building, so that it can not be seen. But we still need to serve the purpose that the Candlewood across the street. Jim my manager watches that three or four times a week and they are getting 30 to 32 rooms average of walk-in business. I think we probably had three this month, maybe four. Part of it is identity problem. It is a very serious problem for a business standpoint. Really appreciate your consideration.

PITTS: Question from the bench? Anyone to speak in opposition?

STEVE TATUM, I LIVE IN WILDERNESS ESTATES AREA 2920 E. CYPRESS, WICHITA, KS 67226- Located to the south and west of where MainStay Suites is. I spoke last time with the Board on this issue and I have since spoken with Mr. Clark and we had a very nice conversation. I think he is a nice man and I think he knows what he is trying to accomplish. The key things that we would like to make a point on, is one, I really want to feel that the Board is taking this under very strong consideration, because there is some precedent setting issues here. We appreciate that all along K-96 is "LI" Light Industrial and they can put signs up to the code. What we are really trying to protect is 29th Street.

On 29th Street the tracts are zoned "GO" General Office. This is the tract on 29th and the concern that we have is what is the next step and the fairness issue that the other tenants and property owners along 29th begin to say "MainStay Suites, got a variances, why not us." Then it continues to snowball towards where we have another Rock Road on our hands on 29th. We already have some congestion issues with 29th being a two lane road and the spill over from Rock and Wal-Mart and all of those things. We are starting to get concern about that the aesthetic presence or the appealing nature of 29th Street will be jeopardized because of MainStay Suites getting this variance. Another issue to question maybe Ms. Verts would be, the pole sign is being increased from 20 to 35, which would imply that there is already a pole sign there.

VERTS: Increasing the maximum.

TATUM: Increasing the maximum for the pole sign?

VERTS: Allowable for a pole sign.

TATUM: Ok, there is a monument sign that is already there. Will the monument sign be removed? There will be another pole sign. So given the ruling of the Board last time, a month ago, which was to put a new sign, is it possible to use these slides? Is that ok with you Mr. Boggs to use your pictures? First, of all if you would go back to the first color, let's just stop here while I digress on a point. First of all, it is a very good position to take a picture from right here, given this sign is in the way of where this sign that was approved last time will go right here on the building. I believe another point of clarification that you have said that would be in that indentation and not on the Far West. Is that per the discretion of the applicant or does the Board have jurisdiction over that?

VERTS: That was what was stipulated on the site plan that was submitted.

TATUM: Is that hard fact?

VERTS: Yes.

TATUM: That is a key issue. There is a nice place for that sign to go and we think after driving that many times, and I hope you all had a chances to drive that as well. That sign is going to be right here. Right now there is no way to tell what this hotel is coming from the west. That sign, which is needed for his business, will increase the visibility a lot from the folks coming from the west. That sign is going to be right there, you are coming

up here, this sign, which is a temporary sign because of construction on the other side of Webb, will be gone I assume since it is right where construction fines doubles. I assume that is a temporary sign, that comes out, you will be able to see that building right here coming from the west so it makes that pole sign, in my mind, redundant and not necessary.

If there is a monument sign, and a pole sign, and the sign that is already on the north and a sign on the front and now a sign on the west. That is five signs on this building. That is more signs than you have directions. That seems a little excessive given the visibility you need. Coming from the other way, right here and I have driven this many times because again we want Mr. Clark to succeed at this place, he has a nice hotel, he keeps it clean. There is a sign right here that says MainStay Suites, as you come up here, you can see this sign is more visible, it would be nice if you could raise this sign up, and apparently that is not possible in talking about it. If that sign could be raised then you would have visibility way back on K-96, even before you could see the Candlewood sign. So that sign right here and you can't see it because it is blurred and it just happens to be I am sure. But that sign is blurred here, but you can see this sign coming on K-96 very easily as much as you could see your pole sign. Now, if you could go to the next slide, as you get onto the over-ramp, I am sorry it would be one slide back, right here you are up on the overpass over Webb Road. If you are looking at this sign and trying to exit onto Webb, you have got some trouble. You are on the overpass now, that exit rolls around, you are going to make a quick two-lane move to get over on a very busy road, Mr. Boggs, pointed out. So that becomes a traffic hazard at some point. If you make a decision and you want to get off and you have seen a Candlewood sign and you have already seen this sign on the road, plus you have got the Marriott buildings coming on, presumably will have a sign.

If you are going to exit and want to catch one of these hotels, you are making that decision before you reach this point. If you are not you are putting yourself and other motorists in danger, in my opinion. If you travel that again you have got to make a quick wheel around move to get around. Again, another thing for the business and Candlewood versus MainStay Suites, the name MainStay Suites, first of all is not a very widely known brand name, I don't think any of us have ever been familiar with that in Wichita. The word MainStay Suites implies an extended visit hotel, versus, Candlewood Hotel. So, to compare Candlewood Hotel with MainStay Suites in the fact signage is creating that business, seems to be a little bit of a problem. You are setting here and I want to stay one night, there is Candlewood Hotel, here I got MainStay Suites, which again implies extended stay. So, I do not know that it is a fair comparison to say that because Candlewood has a sign that they have more walk-in business than MainStay.

Another point that I will make and it may not be conducive, but just looking at the travel patterns through that area, I think that is mostly commuter traffic. I do not know how many people are touring Wichita on K-96 unless you are going from El Dorado or maybe Emporia to Hutchinson, or to McPherson. If you want to go anywhere north or west of McPherson, you are going to Kansas City and go I-70. I do not know how many people are staying overnight that travel from McPherson to El Dorado, which is a two hour trip, give or take, I do not think that requires an overnight stay.

Again, the points we want to make is one, we do not think this sign is going to have that

much marginal impact on his business. We do think that the sign that has already been approved on the west side will have an impact and we are glad for him and I think that sign is necessary as long as it stays on the indentation because that will put it out of view from all of 29th and the residences. Beyond that, the precedence setting along 29th Street, we are very concerned about that right now. All the other property owners along there are restricted to a monument sign. You have got the Chalet Tavern down the road and they have a building sign, when do they want a pole sign? I guess where does it stop is the question?

Again, we really ask you to considered this issue and there was not as many responses to your office of that because of lack of notice. There were many letters sent prior to that and I think they were all made copies of from FoxPoint, from our neighbors in Wilderness Estates. Again, we just ask you just think about, will this really have that much impact on his business and on top of that the precedence setting that could be created on 29th Street, not K-96 but 29th Street. Thank you for your time.

PITTS: Any questions for Mr. Tatum?

FOSTER: Yes, Mr. Chairman, may I ask Mr. Tatum a question?

TATUM: Yes, sir.

FOSTER: I am sorry where is the fifth sign, I keep thinking four signs. You are talking about where they have their name on it, right?

TATUM: Mr. Boggs, and Mr. Clark, might be able to help me. There is four now, with the pole sign.

CLARK: There is three.

TATUM: Ok, you are going to erect one on the side of the building on the west side and so that is four. The pole sign would be five.

CLARK: Can we clarify again. The sign on the front of the building over here, it is not very visible because it is right above or right below the lower level of the second floor. It is not 35-feet tall it is 26 feet?

TATUM: I appreciate that, but the question was how many signs there are.

FOSTER: Ok, that is one, Mr. Clark, where is the other one? You have got one on the ground to serve the entrance on 29th Street.

CLARK: There is a monument sign on the ground.

FOSTER: To tell people where to turn in.

CLARK: We will show you a picture of it. Ok, there is a monument sign.

FOSTER: To tell people where to turn in, is it lit?

CLARK: Yes, it is lit.

FOSTER: Ok, so it tells people how to find the entrance. Where is the third sign?

CLARK: Got one on the front, and we have permission to put a sign right here.

FOSTER: Are you going to put one there?

CLARK: Yes, we are.

FOSTER: How big will that be?

BOGGS: About 64 square feet, it is the same size at...

FOSTER: Does it angle toward the highway so to speak?

CLARK: No. They will be seen coming this direction only, it will not be able to be seen from this direction. It sets into indentation here so the building is blocking the view coming from any direction, except I call it going south.

FOSTER: So you will have two signs on the front then?

CLARK: No. This will be facing, it is on this side of the building but it is facing this direction.

FOSTER: One of them faces northwest.

CLARK: This one faces this direction and it really does not accomplish anything.

TATUM: It is going to be five signs once you put a pole sign in.

FOSTER: And the pole is number five. I just wanted to know. I had forgotten perhaps that one on the north.

CLARK: But, the sign that sends the people to this building now is not a very good sign. It is seen for a couple hundred yards.

TATUM: The only thing about your low level and it would really be nice if you could raise that sign and we talked about that. But, if it can't happen still by the time that sign gets out of site and you see the pole sign and even that is questionable, you have got to exit over to far to quickly. I can't imagine anybody's going to make a split decision on a hotel if they are choosy buyers on hotel rooms as someone mentioned. It seems a little bit convoluted that you would see that sign and then all of the sudden you are going to whip over two lanes, in 65 mile an hour traffic. So, again the marginal effect of the signs seems to be questionable and again hopefully you can take that money and spend it on something else.

PITTS: Thank you very much. Is there anyone else to speak in opposition to the sign?

You have a question?

BABICH: Mr. Tatum you talked about the concern you have for 29th Street and I am trying to relate what your opposition of that would be on K-96 to what your concern is about what would develop on 29th Street?

TATUM: The tract's on both properties, on both K-96 and 29th Street.

BABICH: If it we were allowed, that sign does not have anything to do with 29th Street on this property or on any other tract. It is very limited as to where this pole or pylon sign can be. It is a very exact location as we pointed out and has nothing to do with 29th Street. My further concern is, the letters we received from the area, always related to 29th Street. I do not understand that.

TATUM: Again, sir. I am not versed in zoning variances and city planning and all those things. Very few of us are. All I know is that we are residencies in Wichita and we see a tract that is on 29th Street and on K-96 and it was zoned "GO" General Office, when the applicant bought the property. Since then one variance, last month another variance and now we are seeking another variance to on that particular property that everybody knew what the restrictions were when they bought the property. Now, we are on 29th and I wonder, again, the Board members change and things change. Is that the next applicant that is down the road says, I am on 29th its lost that it is K-96 what Mr. Clark is trying to appeal to that visibility and then it becomes I am on 29th and they are on 29th Street. I do not understand how those integrity issues are preserved. We just have a concern that that somehow gets lost over time and then the issue is I am unique because I am on 29th Street and I do not have a pole sign variance and this property owner on 29th does and the K-96 issue gets lost. Now, we have trust that the Board to preserve those issues but, it would be again a precedence setter that could come under question later and if it created a marginal benefit to the hotel we could understand it but it does not seem that it will. That is our issue on 29th and K-96.

BABICH: Thank you.

PITTS: Any other question of Mr. Tatum? Is there anyone else in the audience to speak in opposition to this variance? If not, we will confine the discussions to the bench.

FOSTER: Mr. Chairman, I think I made the motion the last time to defer this to provide more study and so forth and I believe the applicant has done that. They have lowered the size of the sign and they have provided us with detailed information. I think the sign that was left on last time was the most important one that showed it just above the highway level and still below the height of the structure itself. They have moved it so that it can not be seen from the west or the southwest, I believe they have taken into account the things various members of this Board raised questions on last time.

I feel they have a genuine hardship, and I was just trying to mentally think, and I suppose you will laugh at me, but I was sitting her trying think if I ever stayed in a place overnight that did not have some kind of sign out front. I think we tend to expect to see a pole sign or a monument sign, out front of a hotel, motel, or suite. I was just going through all of the ones I have stayed at and I couldn't think of any that did not have some kind of sign

out front. I know that I have passed that area many times and I have been past that probably four or five times since the last month. I looked at each time and I just don't think having those signs on the building itself has the impact that the pole sign will have in attracting somebody to the location. Somebody might read it and maybe not pick out the wording exactly and think it is an office structure or something else. I think the defining sign that they need is this pole sign. I would be prepared to make a motion to that effect.

PITTS: Is there any other discussion from the bench Mr. Foster.

ROGERS: I totally agree with Mr. Foster I think the applicant has gone out of their way to try to place this sign especially at night when it is lit, out of sight of the neighbors and I support Mr. Foster's statement completely.

PITTS: Any other comments or discussion?

BABICH: Yes, at looking at the broader issue, what we are after here is so that everybody can win and that improves the quality of life of the residence. That was the Board's primary concern last time, was that those signs, if they are necessary, and that is a business decision that is not left to us, that it would not impact the neighbors, particularly in FoxPoint. I do not believe that it will set a precedent for 29th Street because we have allowed a variance on K-96. I think what we are in here for is to make this business successful and make the aesthetics proper and make things easy for a new employer in Wichita and to increase the tax base. I think the willingness to relocate the sign and decrease the size of the sign at the same time not make it visible to the neighborhood meets all those. I will be supportive.

PITTS: Any additional comments?

FOSTER: By the way, I think I speak to the point that the opposition made, I think you have made this Board very aware of what could happen out there and you have achieved part of your purpose I hope in that area.

FOSTER moves and ROGERS seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report and this will be for variance number three, increasing the size from 32 to 96 feet.

MOTION CARRIES 5-0.

PITTS: Variance four we have discussed both conditions.

FOSTER moves and BABICH seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report and this will be for variance

number four and that will have the condition that it be a neutral color and so forth.

MOTION CARRIES 5-0.

TATUM: May I ask one question? Do variances go with the property or with the tenant?

FOSTER: With the property.

TATUM: So, if another tenant comes in he will have a pole sign?

FOSTER: He will have the variance.

PITTS: The variance goes with the property.

BABICH: I wanted to save this until after the proceeding because I did not want it to prejudice the proceedings. But, this issue went before the CPO (2) and there was not anyone there from the applicant and I was wondering what your thought process was in eliminating that step?

CLARK: When this week?

BABICH: No, prior to that.

CLARK: No, Mr. Boggs was there.

BOGGS: I forgot.

CLARK: But, the last one I was in San Diego.

BABICH: The reason I bring that up I think the process might have worked smoother and moved through more logically because it might have been addressed at the CPO meeting and might have come here in a more pure document and you would have one meeting here instead of two.

CLARK: This is all new to me. So I am getting an education.

PITTS: Thank you. We will go to the next case, BZA 25-99.

2. Case No. BZA 25-99, Deborah L. and James W. Cain, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to reduce the rear yard setback to 8 feet on property zoned "MF-29" Multi-Family Residential on property legally described as follows:

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located east of Oliver Avenue on the south side of Orme (4815 E. Orme).

VERTS: Reviews staff report and presents slides.

BACKGROUND: The applicant is requesting a variance for a decrease in the required rear yard setback from 20 feet to 8 feet. The reason for the variance request arises from the applicant wishing to connect his existing home to the existing rear-lot on-alley garage by building additional living space between the two; essentially making one large primary structure out of an existing primary structure and accessory structure. The additional living space will be used as a master bedroom, which will contain a “safe room” for emergency weather situations.

The garage is considered a residential accessory use under the Unified Zoning Code. According to Section III-D.7.f(1), “accessory structures shall be set back at least ten feet from the centerline of any platted or dedicated alley.” In addition to this zoning setback requirement there is an 8-foot utility easement along the rear and side (west) property line. The existing garage is in compliance with the aforementioned easements and setbacks. By making the existing structures one structure, thus the primary structure, the rear yard setback requirement increases to 20 feet for a primary residential structure, necessitating this request for a variance. Another option for the applicant is to leave a 3-foot separation between the new addition and the existing garage, with a connecting roof, creating a breezeway between the two buildings. In this case, the existing garage would still be an accessory structure and still be in compliance with all setback and easements. The applicants do not think this is the best or safest option.

According to the applicants, the creation of a breezeway between the garage and home introduces safety and structural problems to the site and home. The breezeway would offer potential intruders a convenient place to hide. Additionally, the applicant feels that a stronger roof can be built if the two structures share the same wall.

The surrounding uses are primarily residential, both single- and multi-family units, on property zoned “MF-29” and “B” Multi-Family Residential. There are commercial uses to the west and all along Oliver Avenue.

ADJACENT ZONING AND LAND USE:

NORTH	“MF-29” – Single-Family Residence
SOUTH	“B” – Apartment Complex
EAST	“MF-29” – Single-Family Residence
WEST	“LC” – Commercial (Oak Merchant)

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the accessory garage is already built. The lot is very compact and any additions to the home would have to occur in the requested location.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the room addition would be internal to the property and between the two existing buildings on the property. No new encroachments would occur to the perimeter of the property that would be adjacent to surrounding property.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicants feel that, without the variance, they would have to build a building that is structurally inferior and potentially more susceptible to crime. With the variance, their hardship would be avoided.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as no public utilities or rights-of-way are being infringed upon; all public utility easements are being honored.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the project does not negatively impact adjacent property.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to decrease a rear yard setback be GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the rear yard setback shall be reduced to 8 feet. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements and all improvements shall be completed within one year following the BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board if the applicant fails to comply with any of the foregoing conditions.

PITTS: Where is the school?

VERTS: It is on the other side of Oliver.

FOSTER: Does that garage open to an alley? Is that what I saw there? The door was closed?

VERTS: Correct. It opens directly to the alley.

PITTS: Any other question of staff? Is there anyone in the audience to speak in support of the variance?

JAMES W. CAIN, 4815 E ORME, WICHITA, KS 67218: My wife and I live there and it is a very small residential home. It is a little over probably 1,110 square foot. We had moved from a considerably larger house, so we are trying to expand with an additional 1,000 foot there in between the two buildings. The safety factor that my wife is primarily concerned with is she teaches and she comes home late after dark and the breezeway there would create a place that someone could hide getting from the garage into the house. So we would look to connect them with a locked door in between that is the main concern there. Tying the rooflines together, are feeling is that we could connect the rooflines but with the other part of the structure enclosed I think it would create a problem with wind whipping under there in case we would have something like the tornado across the street that hit the school. That was the main concern there. One of the additions, part of the additions is the safe room that we are putting into the master bedroom, which is basically for the tornado situation. That is pretty much all I have to present.

PITTS: Any questions for Mr. Cain, from the bench?

VERTS: I forgot to mention that CPO did hear this case last night and they voted 5-0 to approve this variance.

PITTS: Is that what you passed out just a while ago?

VERTS: Yes.

PITTS: May take just a second, if you would like to read the CPO report.

FOSTER: Lisa, are there any standards in the zoning regulations for the lot coverage of the buildings of the structures?

VERTS: Not in residential zoning district or in the single family residential.

PITTS: Would you restate your question Mr. Foster, I did not hear it.

FOSTER: Well, you can see that it is a very intensely used site, only 55 feet wide in the front. I am used to seeing zoning regulations with a little more effort, they could use the whole site, if they filled in the area next to the garage. I thought we had something that would, in other words, somebody could build the entire site, 100 percent?

VERTS: Yes.

FOSTER: That is not a good zoning regulation.

VERTS: I agree and I questioned that at the beginning of investigating this case myself. But, there is nothing in the zoning code for these single-family residential districts that says, "maximum lot coverage."

FOSTER: You see what I am saying, most zoning regulations will have like 30 or 35 percent of allowable coverage. I would have thought a case like this would not only have been what he requested but also maybe to allow the coverage to go from say 40 percent

to 70 percent or something like that. I think that is rather amazing. I think that is a flaw in the zoning regulations.

BABICH: The zoning regulation in this area is MF-29, so the limitation is 29 units on an acre of ground. It is a residence in MF-29.

FOSTER: But that would not necessarily limit the amount of a building on a site.

BABICH: I think we have to think in terms of a multiple family residential. In English terms MF-29 means a three story apartment building, it is pretty dense.

FOSTER: Mr. Chairman, I agree that it is the only direction that the applicant could go, he has a modest size house and that 1200 square feet and this would be the logical way to expand it. I think if you are going to expand it you might as well go all the way to the garage and not leave that gap in between. But, I am a little amazed at the intensity of the site.

PITTS: Any other discussion from the bench. The chair will entertain a motion.

ROGER moves and TIDEMANN seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

MOTION CARRIES 5-0.

PITTS: We need to review and approve the meeting date calendar for the year 2000.

FOSTER: How does the date November 28, 2000 compare for Thanksgiving? Is that right afterwards or does anybody know for 2000 calendar? Anybody got a 2000 calendar?

DICKGRAFE: Thanksgiving, I think is always the third Thursday of the month of November.

BABICH: Thanksgiving is the 24th of November in the year 2000.

FOSTER: So this would be the Tuesday after Thanksgiving.

FOSTER moves ROGERS approved for the year 2000.

VERTS: December 19th, we had moved that and it is actually the third Tuesday of the month instead of the fourth and we just wanted you to know that.

SIMMERING: It is highlighted, I highlighted because the fourth Tuesday is Christmas. Or the day after Christmas so when you are approving this we just wanted you to know that you are approving the December 19th is the 3rd Tuesday in December.

PITTS: We have a motion and a second to accept the dates as presented as our 2000 calendar.

MOTION CARRIES 5-0.

PITTS: Any other business?

DICKGRAFE: I might just mention that I am working on some revisions or tweaking to the bylaws to deal with the fact that you have to have a affirmative vote of four and just to clarify that yes, we do hear sign code variances if you look at our bylaws it is not real clear that we do those. If anyone else has any comments or maybe next time I can provide you the current set of bylaws if you do not have them so that you can look over and see if there are any other changes that the Board wants to make.

PITTS: Repeat that again.

DICKGRAFE: What I am doing? What changes I am making? One of the bylaws is that you have to have an affirmative vote of four rather than simple a majority of the members present, which has caused us some problems in the past, that if we have five members present and the vote is 3-2 it does not pass so it comes back and in an appeal case we had three hearings and it was real divided and finally it went one way or the other. Most other Boards here in the City and in the County Board of Zoning Appeals, a simple majority of the quorum present is sufficient to pass. It is not entirely clear from the existing bylaws how sign code variances should be handled. That is something that was added well after the time the bylaws were adopted. There is no legal prohibition that we can hear them, that is set forth in the Unified Zoning Code. But, it is more of a clean up on my part than anything else.

BABICH: The other thing, I thought was a little bit different then I guess, when there was a tie, then the resolution would not past and the current way it is written the resolution is deferred I think.

DICKGRAFE: Yes, you are right, if there is not an affirmative vote of 4 then the matter comes up on the next Agenda.

FOSTER: Is that in there, those exact words, you just said?

DICKGRAFE: Yes, that it requires an affirmative vote of four and if an affirmative vote is not ascertained than it is deferred to the next meeting. I think on the Word of Life sign we kind of got into that issue. That the first time the vote was 2-2 and the next time it was 3-1 and we were not going to get there at that meeting.

FOSTER: I am not sure there is a lot, I am not sure that it is bad to vote in a lot of divide votes when there is not agreement, that is what we are working towards. I think we ought to have a serious discussion when we consider the bylaws as to whether to keep the four. I know that I asked about that Mr. Chairman when I first came on as to why. As far as I know unless anybody knows otherwise, one of the original thoughts was as you recall that we make a final determination and it does encourage attendance. I mean if we have just four people here. It does mean that four people have to make a decision, I

know there are times when we are glad to have five just in case. I don't think we should automatically do it, I think we ought to think about it.

DICKGRAFE: What I will do is present some proposed amendments. If you want to pass them great, if you don't, the current bylaws are fine, it is just from past Board members I know Doug had some concerns and that the cases where it kept coming back and coming back and it did not appear that we were ever going to get four and what happens if you don't ever get four?

FOSTER: It means it does not pass.

DICKGRAFE: Is that really fair to the applicant? Either approve it or deny it so that he can go on with his appeal which is the next step.

BABICH: One of the conditions that could cause that to happen would be the laps of Councilmen making appointees, is there any history of that?

DICKGRAFE: I think there has been a history that if you miss three meetings, you are technically taken off the Board. You can then be re-appointed by the Councilperson and you are right.

BABICH: Three in a row?

DICKGRAFE: Yes.

SIMMERING: Yes, three consecutive meetings.

DICKGRAFE: You are right that there could very well be a delay in that period of time, so you would be looking at a Board of potentially of six and then Bickley is right you get into the issue of how many people do you have here? Four is a quorum. Does it make sense for all four of those to be in agreement or should a majority of those four be sufficient. I guess that needs to be an issue that the Board wants to decide.

FOSTER: The point is that when we are voting on things and we are not voting on conditional uses anymore, we are voting on appeals and variances and these are not to be lightly given. Do you see what I mean? Everybody else has to meet all the other rules except what they come to us for. I would have to tell you in all fairness, I am a planning consultant so I have a lot of clients and I would certainly tell you that most of them do just allow the majority vote. I think many of the ones that we have here are much more important cases. They are much more intrusive to neighborhoods and so forth, they are higher, I just don't think we ought to lightly do it, is all I am saying. I think we ought to think about it and think of the cases that we have had. In other words, we are voting for something that is an exception when we do that, it is not just approving something to let them do something. It is allowing them to do it as an exception to what everybody else in the City does in that situation. So, it is a little different vote than approving a zoning case or something like that.

BABICH: I certainly agree with the significance of it, but what I would be curious about being relatively new here is the history that could compile use to change it. Have we had

situations where if the rule had been changed, we would have moved on.

DICKGRAFE: Homer Morgan, it was an appeal case and yes I think there was several three to two votes different ways. With a 3-2 vote the attorney, probably, and I would need to check the minutes, probably after the first meeting would have had a decision to either have appealed it or lived with it. I think in that particular case the applicant and the attorney came back three times if not four times, by the time it was all over, before he finally got a ruling that was appealable.

FOSTER: That was a very hard case, that was a very difficult case that lead to that kind of voting.

DICKGRAFE: I just want to make the Board aware.

PITTS: We will have plenty of time to review that and discuss it to any action being taken on it?

DICKGRAFE: Yes.

MEETING ADJORNED 3:00 p.m.